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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,812	07/19/2004	Werner Helms	016909-0320	4934

22428 7590 08/18/2005

FOLEY AND LARDNER  
SUITE 500  
3000 K STREET NW  
WASHINGTON, DC 20007

EXAMINER

KIM, EUGENE LEE

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 08/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/501,812

**Applicant(s)**HELMS ET AL. C**Examiner**

Gene Kim

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/19/2004</u> . | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 3,, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention.

See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6, 8, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jean Louis (FR#2780153).

Jean Louis show a multi-chamber tube which is manufactured from a flat strip with two longitudinal faces 12, 14, two curved narrow faces 16, 18, at least one web which is folded out and which divides adjacent chambers which is soldered to the inner wall 14

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with an embossment 34. As best understood, Jean Louis does not show a longitudinal seam as claimed. However, examiner takes official notice that longitudinal seams are well known in the art and it would have been obvious to provide Jean Louis with a longitudinal seal to close off the tube if needed. Regarding the dimensions as claimed, the examiner notes that little patentable weight is given to ranges unless a new and unexpected result which is different in kind and not merely in degree is produced for process claims. See in re Dreyfus, 22 CCPA (Patents) 830, 73 F.2d 931, 24 USPQ 52; in re Waite et al, 168 F.2d 104, 77 USPQ 586. Regarding claim 9, the examiner notes that determination of patentability is based on the product itself. Since claim 9 depends on claim 1 (a product), the patentability of the product does not depend on its method of production. If the product in the product by process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed Cir 1985)

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jean Louis in view of Rhodes et al (EP # 1074807). Jean Louis does not show embossments alternately arranged on the longitudinal face as claimed. However, Rhodes et al teach this concept to form a more economical manufactured product (col 2 lines 30+). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Jean Louis with alternately arranged embossments as taught by Rhodes et al to produce a more economical manufactured product.

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5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Muneo (EP#293) shows a longitudinal seam.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gene Kim whose telephone number is 571 272-4463.

The examiner can normally be reached on Tuesday-Friday 8 a.m. to 6 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gene Kim  
Primary Examiner  
Art Unit 3721